IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.516/2004
Indu Kumar Avasthi Vs. Shiv Lal Avasthi

Against judgment and decree dated 17.07.2004 passed by Addl. District Judge No.3, Jodhpur in Civil Original Suit No. 5/2004 – Shivlal Vs. Indukumar.

DATE OF JUDGMENT:: 20th March,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. A. K. Rajvanshy for appellant.
Mr. M. K. Trivedi for respondent.

BY THE COURT:

This first appeal is directed against the judgment and decree dated 17.07.2004 passed by learned Addl. District Judge No.3, Jodhpur in Civil Original Suit No.5/2004 decreeing the suit filed by the plaintiff-respondent inter-alia in respect of eviction of some part of the disputed property and mesne profits at the rate of Rs.2,000/- per month.

At the request of learned counsel for the parties, the matter has been heard finally.

The contention of the learned counsel for appellant-defendant is that the learned trial Court has not given proper opportunity to the appellant-defendant to file written statement and has decreed the suit in its totality under Order 8 Rule 10 CPC. The learned counsel submits that on the day fixed for filing written statement, when counsel for appellant-defendant reached the Court and made a request to adjourn the case, the trial Court refused to adjourn the case and after some time even when the counsel wanted to file the written statement, the trial Court did not accept the written statement and stated that the suit has already been decided. The learned counsel requests that in the interest of justice the appellant should be afforded one opportunity to file the written statement so that he may place his case before the learned trial Court.

On the other hand, it has been contended that Power was filed on 16.03.2004 and on the date fixed for filing written statement, the same was not filed as such on

17.07.2004 the suit has rightly been decreed under Order 8 Rule 10 of the CPC. The learned counsel submits that there is no illegality in passing the judgment & decree by the learned trial Court.

I have considered the submissions made before me.

It appears that on account of non-filing of written statement, the trial Court on the day fixed for the purpose, has decreed the suit which was filed in pursuance of the dispute between father and son in relation to some property. Though it is correct that on the date fixed for filing the written statement the Court can proceed to pronounce judgment but at the same time, the Court should normally see that injustice to the parties should not be done and reasonable opportunity is required to be given.

Taking into consideration the over all facts and circumstances of the case, I deem it proper to allow the present appeal on payment of cost of Rs.5,000/-.

In view of above, the judgment and decree passed by the learned trial Court in Civil Original Suit No. 5/2004 (Shivlal Vs. Indukumar) is set aside provided the appellant pays cost Rs.5,000/- to the respondent or his counsel on or before 15th April 2006.

The parties shall present themselves in the trial Court on 15.04.2006 and on that day the appellant shall file his written statement. The trial Court, thereafter, shall proceed in the matter according to law. If the amount of cost is not paid within the time allowed, the judgment and decree passed by the trial Court shall sustain.

(SATYA PRAKASH PATHAK)J.

/jpa